

ARTICLE I. GENERAL PROVISIONS

Section 1 Authority

As an independent branch of State Government, the Maryland Judiciary establishes a procurement policy under the authority of the Chief Judge of the Court of Appeals pursuant to the Maryland Constitution, Article IV, Section 18. This Policy does not supplant any constitutional or statutory rights possessed by the Judiciary.

Section 2 Application

The Judicial Branch procurement policy applies to the Court of Appeals and its related units, the Court of Special Appeals, the District Court of Maryland, the Administrative Office of the Courts, the Clerk of Court Offices of the Circuit Courts, and Court-Related Agencies.

Section 3 Terminology

Terms Defined

Appeals Board is the three-member panel that hears all contract appeals within the Judicial Branch chaired by the Director of the Department of Legal Affairs within the Administrative Office of the Courts and a representative from the Office of the Clerk of the Circuit Courts and the District Court.

Award means the notification by the Procurement and Contract Administration Department, after all required approvals have been obtained for:

- (a) an executed contract; or
- (b) written notice of award to the selected vendor.

Bid is a statement of price, terms of sale, and description of the materials, supplies or services offered by a bidder in response to an invitation for bids under procurement.

Bidder's application is the appropriate form designated by the Procurement and Contract Administration Department for use by vendors wanting to do business with the Judiciary.

Bid Board is a bulletin board displayed in a public area on which solicitations and related procurement information are posted.

Business means any corporation, partnership, individual, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.

Change order refers to a signed written order issued by the Procurement and Contract Administration Department, directing a contractor to make changes within the scope of a contract and to the extent the Procurement and Contract Administration Department may order such changes with or without the consent of the contractor.

Contract means a formal, written agreement entered into by the Judiciary for the acquisition of materials, supplies, and services.

Contract modification is any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of any existing contract, whether accomplished in accordance with a contract provision, or by mutual action of the parties to the contract. It includes change orders, extra work orders, supplemental agreements, contract amendments, or reinstatements.

Contractor is any person having a contract with the Judiciary. Contractor does not include an employee with an employment contract, or an employee organization with a collective bargaining agreement.

Day means calendar day unless otherwise defined.

Determination means a written decision made by a procurement officer related to the procurement process.

Emergency refers to a sudden and unexpected occurrence or condition which the Judiciary reasonably could not foresee and which requires an action to avoid or to mitigate serious damage to health, safety, or welfare.

Equipment is personal property of a durable nature that retains its identity throughout its useful life, but does not include commodities, motor vehicles, or information technology equipment (hardware and software).

Equivalent item means an item of equipment, material, or supply, of which the quality, design, or performance characteristics are functionally equal or superior to an item specified in a solicitation.

Evaluated Bid Price is the dollar amount of a bid after price adjustments under objectively measurable criteria.

Fund availability refers to funds that are contained within the proper object of expenditure within the Judiciary budget.

Information technology is all electronic information processing hardware and software, including:

- (a) Maintenance;
- (b) Telecommunications; and
- (c) Associated consulting and support services.

Invoice is a contractor's written request for payment.

Lease is a contract under which the Judiciary uses real or personal property to which the Judiciary does not possess title. Lease does not include lease-purchase or similar financing transactions.

Minority business enterprise (MBE) means any legal entity, other than a joint venture, organized to engage in commercial transactions which is, at least, 51 percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled.

Minority Person refers to a member of a socially or economically disadvantaged minority group, which for purposes of this Policy includes African Americans (not of Hispanic origin), Hispanics, American Indians, Asians, women, and the physically or mentally disabled.

Most advantageous means that proposal received from an offeror that is determined to be most beneficial to the Judiciary considering price and evaluation criteria set forth in the request for proposal.

Most favorable refers to a bid received from a responsible bidder that is the lowest bid price, or lowest evaluated bid price, or the bid or evaluated bid that yields the greatest revenue for the Judiciary under a revenue-producing procurement contract.

Multiple award means the award of contracts to more than one vendor for the same goods or labor.

Multi-year contract is a contract that requires appropriations for more than one fiscal year.

Objectively measurable criteria means standards, not matters of opinion or subjective judgment, that enable the Judiciary to compare the economy, effectiveness, and/or value of the subject of the solicitation including reliability, operational costs, maintainability, useful life, and/or residual value.

Option is the unilateral right of the Judiciary under a contract to extend the contract for an additional period of time, or to purchase delimited additional goods or labor, or to purchase materials or facilities that have been leased.

Oral bid is a bid proposed by a means other than by writing.

Person means any individual, or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club, or other organization or legal entity.

Procurement includes all functions that pertain to the process of buying, leasing, purchasing, or otherwise obtaining any materials, supplies, and services, including description of requirements, selection, and solicitation of sources, preparation and award of contract, as well as written determinations and findings pertaining to the procurement process. Procurement does not include grant administration.

Procurement Officer means a person authorized by the Judiciary to conduct and oversee procurement activities.

Proposal means the response by an offeror to a request for proposals issued by the Judiciary to obtain goods or labor. The response may include but is not limited to an offeror's price and terms for the proposed contract, a description of technical expertise, work experience, and other information as requested in the solicitation.

Purchase order is a purchaser's document issued by the Judiciary authorizing a procurement from a vendor. Upon acceptance by a vendor, the purchase order becomes a contract.

Responsible refers to a person who has been determined to have the capability to perform fully the contract requirements and possesses the reliability that assures good faith performance.

Responsive refers to a bid that conforms in all material respects to the requirements contained in the invitation for bid.

Solicitation means invitation for bids, request for proposals, or any other method or instrument used to communicate to potential bidders or offerors the Judiciary's procurement needs.

Specification means a clear and accurate description of the functional characteristics or the nature of an item to be procured. It may include a statement of any of the Judiciary's procurement requirements and may provide for submission of samples, inspection, or testing of an item before procurement.

Supplemental agreement means any contract modification which is accomplished by the mutual action of the parties.

Term contract means a standing blanket order agreement between a contractor and the Judiciary covering a specific time period through which the Judiciary may obtain a specified or unspecified amount of a supply, service, or maintenance.

Using Unit means any Judiciary unit that uses any goods or labor procured under this Policy.

Vendor means a person who desires to enter or enters into a contract with the Judiciary.

Vendor list means a compilation of the names and addresses of vendors that have submitted a bidder's application to the Procurement and Contract Administration Department.

ARTICLE II. CONTRACTS

Section 1 Review of Contracts for Form and Legal Sufficiency

The Judiciary before entering into a procurement contract shall submit the contract to the Legal Affairs Department of the Administrative Office of the Courts for written approval as to form and legal sufficiency.

Section 2 Fund Certification

Every contract, contract modification, change order, or adjustment in contract price is subject to prior written approval by the responsible manager as designated by the using unit and certification by the Department of Finance and Budget within the Administrative Office of the Courts as to the availability of budget funds. If the certification discloses an insufficiency of budget funds, the Director of the Procurement and Contract Administration Department may not proceed with the procurement until sufficient budget funds are made available or the scope of the project is adjusted to permit its completion within the project budget.

Section 3 Determinations

Each determination required by this Policy shall be:

- A. In writing;
- B. Based on written findings of, and signed by, the person who made the determination; and
- C. Retained in the appropriate procurement file consistent with the Judiciary's Records Retention Schedule.

ARTICLE III. SPECIFICATIONS

Section 1 General Purpose

A. A specification is the basis for procuring an item in a cost effective manner. It is the policy of the Judiciary that specifications be written so as to permit maximum practicable competition. Specifications may not be drawn in such a manner as to favor a single vendor over other vendors.

B. Brand name or equivalent means a specification that uses one or more manufacturer's names or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet the Judiciary's procurement requirements, and which provides for the submission of equivalent products. Salient characteristics of the brand name item shall be set forth in the specification.

Section 2 Responsibility for Preparation

The using unit shall be responsible for preparing the specifications. To the extent practicable, functional or performance criteria shall be emphasized while limiting design or other detailed physical descriptions to those necessary to meet the needs of the Judiciary.

Section 3 Responsibility for Review and Approval

The Director of the Procurement and Contract Administration Department or designee shall be responsible for reviewing the specifications for content, clarity, and completeness and to insure that the specifications are not unnecessarily restrictive. Final approval of the specifications shall rest with the Director of the Procurement and Contract Administration Department. Specifications may be revised by the Director for purposes of clarification as long as elements of the specifications remain the same. Revisions which change the technical elements of the specification shall be made in consultation with the using unit.

ARTICLE IV. PROCUREMENT METHODS

Section 1 General Provisions

.01 Competitive Sealed Bidding

A. Procurement by competitive sealed bids is the preferred method for awarding Judiciary procurement contracts. The Judiciary is not precluded, however, from the use of alternative procurement methods as set forth in this Policy or as recognized as generally accepted methods of procurement.

B. Procurements anticipated in excess of \$25,000 shall be awarded by competitive sealed bidding unless the Director of the Procurement and Contract Administration Department, with the approval of the State Court Administrator, determines that:

(1) There is only one available source;

(2) There is an emergency which leaves insufficient time to use this method; or

(3) There is some other reason in the public interest to use one of the other authorized methods which is so compelling as to override the general policy favoring competitive sealed bidding.

.02 Suspicion that Collusion Has Occurred

A. If there is a reasonable basis for believing that collusion has occurred among any persons for any reason, the procurement officer shall send a written notice of this concern to the Director of Legal Affairs.

B. All documents involved in any procurement in which there is a reasonable basis for believing that collusion has occurred shall be retained by the Procurement and Contract Administration Department. These documents shall be made available to the Director of Legal Affairs immediately on request.

Section 2 Procurement by Competitive Sealed Bidding

.01 Invitation for Bids

A. Content

The invitation for bids shall include the following:

(1) Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids and the address where bids are to be delivered;

(2) The purchase description, delivery or performance schedule, and any special instructions necessary; and

(3) Whether award shall be made on the basis of the most favorable bid price or the most favorable evaluated bid price, whichever is applicable. If the latter basis is used, the objectively measurable criteria to be used shall be set forth in the invitation for bids; and

(4) The mandatory solicitation requirements.

B. Acknowledgement of Amendments

The invitation for bids shall require the acknowledgement of the receipt of all amendments, addenda, and changes issued.

.02 Bidding Time

Bidding time is the period of time between the date of publication of the invitation for bids and the time and date set for receipt of bids. The bidding time shall be sufficient to permit competition as determined by the procurement officer.

.03 Bidder Submissions

A. Bid Form

A form shall be provided by the Judiciary which the bidder shall return signed with the price and with other required materials.

B. Bid Content

(1) Bids shall be based upon the specifications contained in the invitation for bids.

(1) Bids shall be typewritten or written legibly in ink.

(2) All erasures or alterations shall be initialed by the signer in ink.

(3) All bids shall be signed in ink.

(4) The bid shall be submitted in an envelope which clearly indicates that it contains a bid.

C. Oral Bids

Oral bids may be accepted only if oral bids are solicited. All oral bids shall be followed immediately by a written confirmation detailing the information required in the solicitation.

D. Bid Samples and Descriptive Literature

Invitation for bids shall state when the bidder is required to furnish samples or descriptive literature.

.04 Public Notice

A. Distribution

Invitations for bids or notices of the availability of invitations for bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of availability shall indicate where, when, and for how long invitations for bids may be obtained, generally describe the material, supply or service desired, and may contain other appropriate information.

B. Publication

Notice of an invitation for bids for which the bid amount is reasonably expected to exceed \$25,000 shall be posted on the Judiciary's website.

.05 Pre-qualification of Bidders

A. When the procurement officer decides that pre-qualification of bidders is appropriate, the criteria for pre-qualification of bidders shall be set forth clearly in the invitation for bids.

B. The fact that a person is not pre-qualified does not bar that person from submitting a bid.

.06 Vendor Lists

A. Vendor lists may be compiled by the Procurement and Contract Administration Department to provide units of the Judiciary with the names of businesses that may be interested in competing for various types of Judiciary procurement contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise is capable of successfully performing a Judiciary contract. Any person desiring to do business with the Judiciary shall submit a bidder's application to the Procurement and Contract Administration Department indicating the types or kinds of Judiciary procurements for which the vendor wishes to be considered.

B. Out-of-State vendors

Vendors shall be registered with the Maryland Department of Assessments and Taxation before award of the contract.

C. Deletion of Vendors

Businesses that fail to respond to solicitations or notices of availability on three consecutive invitations of similar items may be removed by the procurement officer from the applicable vendors list after notice to the vendor. Prospective bidders who were sent solicitations or have obtained bidding documents who have been deleted but who currently meet the criteria for inclusion on the list may be reinstated on the list at their request.

.07 Pre-Bid Conferences

A. Pre-bid conferences may be conducted by the procurement officer or designee to explain the procurement requirements.

B. If a pre-bid conference is held, it shall be announced to all prospective bidders who were sent an invitation for bids or who are known by the procurement officer to have obtained the bidding documents.

C. Any pre-bid conference should be held long enough after the invitation for bids has been issued to allow prospective bidders to become familiar with the solicitation, but sufficiently before bid opening to allow consideration of the pre-bid conference results in the preparation of bids.

D. Attendance at a pre-bid conference may be encouraged, but may not be made mandatory except to the extent required under this Policy. Nothing stated at the pre-bid conference may change the invitation for bids unless a change is made by the procurement officer by written amendment.

E. Pre-Bid Conference Records

(1) When a pre-bid conference is held in connection with a procurement that is expected to exceed \$100,000, the procurement officer shall ensure that a written record of the conference is prepared as soon as practicable and that the record is sent to all prospective bidders who were sent an invitation for bids or who are known by the procurement officer to have obtained the solicitation.

(2) The record or summary of a pre-bid conference is a public record that is open to public inspection during regular business hours.

.08 Amendments to Invitations for Bids

A. Form

Each amendment to an invitation for bids shall be identified as such and shall require that the bidder acknowledge its receipt. The amendment shall reference the portion of the invitation for bids it amends. The procurement officer shall authorize the issuance of an amendment.

B. Distribution

Amendments shall be sent to all prospective bidders who were sent an invitation for bids or who are known to the procurement officer to have obtained the bidding documents.

C. Timeliness

Amendments shall be distributed within a reasonable time to allow consideration by prospective bidders. If the time and date for receipt of bids do not permit adequate preparation, the time shall be increased to the extent possible.

.09 Pre-Opening Modification or Withdrawal of Bids

A. Procedure

Bids may be modified or withdrawn by written notice received in the office designated in the invitation for bids or any written means that is more expeditious than that which is stated in the bid document that will arrive before the time and date set for bid opening.

B. Records

All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

.10 Late Bids, Late Withdrawals, and Late Modifications

A. Policy

Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late. Any request for withdrawal or request for modification received at the place designated in the solicitation after the time and date set for receipt of bids is late.

B. Treatment

A late bid, late request for modification, or late request for withdrawal may not be considered. Upon the written approval of the Director of Legal Affairs, exceptions may be made when a late bid, withdrawal, or modification is received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of Judiciary personnel directing the procurement activity.

C. Records

A record shall be made of each request for late bid acceptance, modification, or withdrawal which shall be retained in the appropriate procurement file.

.11 Receipt, Opening, and Recording of Bids

A. Receipt

Upon its receipt, each bid and modification shall be retained in a secure place until the time and date set for bid opening. Before bid opening, the Judiciary may not disclose the identity of any bidder.

B. Opening and Recording

Bids and modifications shall be opened publicly at the time, date, and place designated in the invitation for bids. The name of each bidder, the bid price, and such other information as is deemed appropriate shall be read aloud or otherwise made available. This information also shall be recorded at the time of bid opening. The bids shall be tabulated or a bid abstract will be prepared. The opened bid shall be available for public inspection at a reasonable time after bid opening but in any case before contract award except to the extent

the bidder designates trade secrets or other proprietary data to be confidential as set forth in this Article. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes, and model or catalog numbers of the items offered, deliveries, and terms of payment shall be available publicly at a reasonable time after bid opening but in any event before contract award regardless of any designation to the contrary at the time of bid opening.

C. Confidential Data

A bidder is responsible for identifying with particularity in writing those portions of a bid it deems confidential. The procurement officer shall examine the bids to determine the validity of any such requests for nondisclosure.

.12 Mistakes in Bids

A. General

Technicalities or minor irregularities in bids may be waived if the procurement officer determines that it is in the Judiciary's best interest. The procurement officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency if it is to the Judiciary's advantage to do so.

B. Mistakes Discovered Before Opening

A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid.

C. Confirmation of Bid

If the procurement officer knows or has reason to conclude that a mistake has been made, the bidder may be requested to confirm the bid. Situations in which confirmation shall be requested include obvious or apparent errors on the face of the bid or a bid substantially lower than the other bids submitted. If the bidder alleges a mistake, the bid may be corrected or withdrawn upon the written approval of the Director of Legal Affairs if any of the following conditions are met:

(1) If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(2) A bidder may be permitted to withdraw a low bid if:

(a) A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(b) The bidder submits proof which clearly and convincingly demonstrates that a mistake was made.

D. Mistakes Discovered After Award

Mistakes may not be corrected after award of the contract except when the procurement officer and the Director of the Procurement and Contract Administration Department make a determination that it would be unconscionable not to allow the mistake to be corrected. Changes in price are not permitted.

E. Determinations Required

When a bid is corrected or withdrawn, or correction or withdrawal is denied, the procurement officer shall prepare a determination showing that the relief was granted or denied in accordance with this Policy.

.13 Bid Evaluation and Award

A. General

The contract is to be awarded to the responsible and responsive bidder whose bid meets the requirements and evaluation criteria as set forth in the invitation for bids, and is either the most favorable bid price or most favorable evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the invitation for bids.

B. Determination of Most Favorable Bid

Bids shall be evaluated to determine which bidder offers the most favorable price to the Judiciary in accordance with the evaluation criteria as set forth in the invitation for bids. Only objectively measurable criteria which are set forth in the invitation for bids shall be applied in determining the most favorable evaluated bid price. The Judiciary reserves the right to make the award by item, or groups of items, or total bid if it is in the best interest of the Judiciary to do so unless the bidder specifies in its bid that a partial or progressive award is not acceptable.

C. Restrictions

Nothing in this Policy shall be deemed to permit a contract award to a bidder submitting a higher quality item than that designated in the invitation for bids if that bid is not also the most favorable bid. Further, this section does not permit negotiations with any bidder.

D. Award

Upon determination of the most favorable bid, review of the bid for responsiveness and satisfaction that the bidder is responsible, the procurement officer shall, after obtaining all required approvals, award the contract to that bidder.

.14 Tie Bids

A. Definition

Tie bids are responsive bids from responsible bidders that are identical in price, terms, and conditions and which meet all the requirements and evaluation criteria set forth in the invitation for bids.

B. Award

The award shall be made according to the following criteria predicated upon the type of business entity involved in the tie bid situation:

1. The bid shall be made to the in-State business if identical favorable bids are received from an out-of-State bidder
2. As part of the Judiciary's goal to enhance overall minority business participation, a contract may be awarded under the following criteria:
 - (a) If identical favorable bids are received from an in-State certified minority business enterprise and an in-State non-minority business enterprise, or an out-of-State certified minority business enterprise and an out-of-State non-minority business enterprise, the award shall be made to the certified minority business enterprise.
 - (b) If identical favorable bids are received from tying in-State or out-of-State certified minority business enterprises, the award shall be made to the certified minority business enterprise having the greatest amount of certified minority business enterprise participation in the particular contract.
 - (c) If identical favorable bids are received from tying in-State or out-of-State non-minority business enterprises, the award shall be made to the non-minority business enterprise having the greatest amount of minority participation in the contract, including staff, or certified minority business enterprise subcontract participation in the contract.
3. If identical favorable bids are received from in-State bidders or from out-of-State bidders, and no rules for implementing a procedure for resolving a tie bid apply, a drawing shall be conducted. A witness shall be present to verify the drawing and shall certify the results on a bid tabulation sheet.

C. Record

Records shall be made of all invitations for bids on which tie bids are received and a copy shall be forwarded to the Director of Legal Affairs.

.15 Documentation of Award

Following an award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file.

.16 Publicizing Awards

Written notice of award shall be sent to the successful bidder. Notice of awards shall be made available to the public by posting on the Judiciary's website.

.17 Multi-Step Sealed Bidding

A. Definition

Multi-step sealed bidding means a two-phase process in which bidders submit unpriced technical offers or samples, or both, to be evaluated by the Judiciary and a second phase in which those bidders whose technical offers or samples, or both, have been found to be acceptable during the first phase have their price bids considered. Low price is the basis of award to the successful vendor.

B. Conditions for Use

Multi-step sealed bidding may be used when it is determined by the procurement officer that it is impracticable to prepare specifications to support an award based solely on bid price.

C. Evaluation

(1) Once the technical offer or samples, or both, have been evaluated and accepted, price bids from only those vendors whose technical offers or samples, or both, have been found acceptable shall be considered and evaluated.

(2) Price bids may be solicited at the same time as technical offers, in separate sealed envelopes, or after evaluation of technical offers, only from those whose technical offers have been found acceptable.

(3) Price information may not be opened until the technical evaluation is complete. Price information from vendors whose technical offers have been found unacceptable shall be returned unopened.

.18 Disposition of Bids

When bids are rejected, or a solicitation cancelled after bids are received, the bids which have been opened shall be retained in the procurement file, or if unopened, returned to the bidders upon request and the file so documented.

.19 Time for Bid Acceptance

A. Unless otherwise provided in the invitation for bids, bid prices are irrevocable for a period of 90 days following bid opening.

B. After bid opening, the procurement officer may request bidders to extend the time during which the Judiciary may accept their bids, provided that no other change is permitted.

.20 Only One Bid

If only one responsive bid from a responsible bidder is received as a result of an invitation for bids (including multi-step bidding) and the procurement officer determines that other prospective bidders had reasonable opportunity to respond, an award may be made to that bidder.

.21 Multiple or Alternate Bids

Unless requested in the solicitation, multiple or alternate bids may not be accepted. If a bidder, however, clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder. The provisions of this Policy shall be set forth in the solicitation and, if multiple or alternate bids are allowed, it shall specify their treatments.

.22 Conditioning Bids Upon Other Awards Not Acceptable

Any bid which is conditioned upon receiving award of both the particular contract being solicited and another State contract shall be deemed non-responsive and may not be accepted.

.23 Novation or Change of Name

A. No Assignment

A Judiciary contract is not transferable, or otherwise assignable, without the written consent of the procurement officer and approval of both the Director of the Procurement and Contract Administration Department and the Director of Legal Affairs provided, however, that a contractor may assign monies receivable under a contract after due notice to the Judiciary.

B. Recognition of a Successor in Interest Novation

When in the best interest of the Judiciary, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

- (1) The transferee assumes all of the transferor's obligations;
- (2) The transferor waives all rights under the contract as against the Judiciary; and
- (3) Unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

C. Change of Name

When a contractor requests to change the name in which it holds a contract with the Judiciary, the procurement officer, upon receipt of a document indicating the change of name (for example, an amendment to the articles of incorporation of the corporation) may enter into an agreement with the requesting contractor to effect the change of name contingent upon the approval of the Director of the Procurement and Contract Administration Department and the Director of Legal Affairs. The agreement changing the name specifically shall indicate that no other terms and conditions of the contract are changed.

Section 3 Procurement by Competitive Sealed Proposals

.01 Conditions for Use

A. Preference

Procurement by competitive sealed proposals is the preferred method for the procurement of human, social, cultural or educational services, and real property leases.

B. Determinations

The procurement officer, with the written approval of the Director of the Procurement and Contract Administration Department with the consent of the State Court Administrator, may make a determination that competitive sealed bidding cannot be used because:

(1) Specifications cannot be prepared that would permit an award based solely on price; or

(2) Competitive sealed bidding is not practicable or is not advantageous to the Judiciary and there is compelling reason to use the source selection methodology set forth in this Policy.

.02 Solicitation of Proposals

A. Public Notice

Public notice shall be given in the same manner provided for invitation for bids as designated by the procurement officer.

B. Proposal Preparation Time

The time for preparing proposals shall be determined and designated by the procurement officer.

C. Pre-Proposal Conference

Pre-proposal conferences may be held in accordance with the proposal requirements.

D. Amendments to Requests for Proposals

Amendments to requests for proposals shall be made in accordance with the proposal requirements.

E. Late Proposals, Withdrawals, and Modifications

Any proposal, withdrawal, or modification received after the established due date and time at the place designated for receipt of proposals is late and may be considered only in accordance with this Policy.

F. Receipt of Proposals

(1) Proposals and modifications shall be held in a secure place until the established due date. Proposals may not be opened publicly but shall be opened in the presence of at least two Judiciary employees. After the established due date, a register of proposals shall be prepared that identifies each offeror.

(2) The identity of an offeror and the register of proposals may not be disclosed before the procurement officer makes a determination recommending the award of the contract. After the contract award, proposals shall be open to public inspection.

.03 Evaluation of Proposals, Negotiations and Award

A. Evaluation

(1) The evaluation shall be based on the factors set forth in the request for proposals.

(2) Technical proposals and price proposals shall be evaluated independently of each other.

(3) Numerical rating systems may be used but are not required.

(4) Factors not specified in the request for proposals may not be considered.

(5) Initial evaluations may be conducted and recommendation for award made by an evaluation committee. Final evaluations, including evaluation of the recommendation of the evaluation committee, if any, shall be performed by the procurement officer and the Director of the Procurement and Contract Administration Department or a designee.

B. Discussions

(1) The term "qualified offerors" includes only those responsible offerors that submitted proposals initially classified by the procurement officer as reasonably eligible of being selected for award.

(2) Purposes of Discussions

Discussions are held to:

(a) Assure full understanding of the Judiciary's requirements and of the qualified offerors proposals and abilities to perform;

(b) Obtain the best price for the Judiciary; and

(c) Facilitate arrival at a contract that will be most advantageous to the Judiciary, taking into consideration price and other relevant evaluation factors set forth in the request for proposals.

(3) Conduct of Discussions

(a) General.

Qualified offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions, negotiations, and clarification of proposals. The procurement officer shall establish procedures and schedules for conducting discussions. If discussions indicate a need for clarification of or change in the request for proposals, the procurement officer shall amend the request to incorporate the clarification or change. Except as provided below, disclosure to a competing offeror of any information derived from a proposal of, or from discussions with, another offeror is prohibited. Any oral clarifications of substance of a proposal shall be confirmed in writing by the offeror.

(b) Real Property Leases

In the procurement of real property leases:

(i) The procurement officer may limit discussions and negotiations to only those responsible offerors that submitted the three best proposals of the proposals received in response to the solicitation based upon the procurement officer's preliminary review of the evaluation factors;

(ii) Discussions and negotiations may not result in the disclosure of any information derived from competing offerors except price and information related directly to price;

(iii) The procurement officer may establish a maximum fair market rental rate for each premises offered and, after price negotiation, may reject as unacceptable any proposal that exceeds the established maximum fair market rental rate; and

(iv) If no offers are received in response to the request for proposals, the procurement officer, with the approval of the Director of the Procurement and Contract Administration Department or designee, may solicit offers directly without republication of notice.

C. Best and Final Offers

When in the best interest of the Judiciary, the procurement officer may permit qualified offerors to revise their initial proposals by submitting best and final offers. The procurement officer shall establish a common date and time for the submission of best and final offers. The procurement officer may require more than one series of submissions of best and final offers and discussions if the Director of the Procurement and Contract Administration Department or designee makes a written determination that it is in the Judiciary's best interest to conduct additional discussions or change the Judiciary's requirements and require another submission of best and final offers. Otherwise, discussion of, or changes in, the best and final offers is not allowed before award. If more than one submission of best and final offers is requested, an offeror's immediate previous offer shall be construed as its best and

final offer unless the offeror submits a timely notice of withdrawal or another best and final offer.

D. Confirmation of Proposal

When, before an award has been made, it appears from a review of a proposal that a mistake as described in **Section 2 Procurement by Competitive Bidding, .12 Mistakes in Bids**, has been made, the offeror should be asked to confirm the proposal. If the offeror alleges a mistake, the procedures regarding mistake are to be followed.

E. Award

Upon completion of all discussions and negotiations, the procurement officer shall make a determination recommending award of the contract to the responsible and responsive offeror whose proposal is determined to be the most advantageous to the Judiciary, considering price and the evaluation factors set forth in the request for proposals. In order for the Judiciary to achieve its overall minority participation goal and if the solicitation documents expressly permit it to be done, the Procurement and Contract Administration Department may recommend and award a contract to a certified minority business enterprise or to a person whose offer otherwise reflects the greatest amount of certified MBE or minority participation in the event of two or more offers in which the offerors' technical and price proposals are determined to be equally most advantageous to the Judiciary. The MBE documentation required shall be used in making this determination. The procurement officer shall notify all offerors promptly of the recommended contract award. Upon the approval of the State Court Administrator and certification by the appropriate fiscal authority as to the availability of funds, the Procurement and Contract Administration Department shall award the contract.

F. Notice of Award

After a contract is entered into, the Procurement and Contract Administration Department shall post notice of its award on the Judiciary's website.

.04 Price Negotiation Policies and Techniques

A. Basic Policy

It is the policy of the Judiciary to procure from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate overall cost to the Judiciary.

B. Type of Contract

The selection of an appropriate contract type and the negotiation of prices are related and should be considered together. The circumstances which lead to the selection of a given type of contract at the outset may frequently change, resulting in a different type of contract being more appropriate during later periods.

C. Objective of Negotiations

Complete agreement of the parties on all basic issues shall be the objective of the negotiations. Discussions shall be conducted with qualified offerors to the extent necessary to resolve uncertainties relating to the procurement, including the proposed price.

.05 Debriefing of Unsuccessful Offerors

A. When a contract is to be awarded on some basis other than price alone, unsuccessful offerors shall be debriefed upon their written request submitted to the procurement officer within a reasonable time. Debriefings shall be provided at the earliest feasible time after the procurement officer makes a final determination recommending the award of the contract. The debriefing shall be conducted by a procurement officer familiar with the rationale for the selection decision and contract award.

B. Debriefing

(1) Debriefing shall:

(a) Be limited to discussion of the unsuccessful offeror's proposal and may not include specific discussion of a competing offeror's proposal;

(b) Be factual and consistent with the evaluation of the unsuccessful offeror's proposal; and

(c) Provide information on areas in which the unsuccessful offeror's technical proposal was deemed weak or deficient.

(2) Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of an evaluation committee, but may include a summary of the procurement officer's rationale for the selection decision and recommended contract award.

C. A summary of the debriefing shall be made a part of the contract file.

Section 4 Procurement By Negotiated Award After Unsatisfactory Competitive Sealed Bidding

.01 Conditions for Use

A. A negotiated award may be made after all bids have been opened or all bids have been rejected or if all bids submitted result in bid prices in excess of the funds available for the purchase or if the procurement officer, with the approval of the Director of the Procurement and Contract Administration Department or designee, determines that all prices received are unreasonable as to one or more of the requirements and that:

(1) There are no additional funds available to permit an award to the responsible bidder submitting the most favorable bid or most favorable evaluated bid; or

(2) Any delay resulting from a resolicitation under revised specifications or quantities under competitive sealed bidding as provided in this Policy would be fiscally disadvantageous or would not otherwise be in the best interest of the Judiciary.

B. If after competitive sealed bidding it is determined that there is only one responsive and responsible bidder, an award may be made to that bidder.

.02 Invitation for Revised Bids

An invitation for revised bids based on revised specifications or quantities shall be issued as promptly as possible, and shall provide for a prompt response to the revised requirements. If the award is to be made without conducting discussions, the invitation for revised bids shall so indicate.

.03 Discussions

Discussions may be conducted with all bidders after revised bids have been submitted when the procurement officer determines that there is compelling need for further negotiation. Bidders shall be accorded fair and equal treatment with respect to any discussions.

.04 Award

An award shall be made upon the basis of the most favorable bid price or most favorable evaluated bid price submitted by a responsive and responsible bidder. Tie bids shall be resolved pursuant to **Article IV, Section 2.14** of this Policy. Notice of the award shall be posted on the Judiciary's website.

Section 5 Sole Source Procurement

.01 Application

If the procurement officer determines that a competitive source selection method cannot be used because there is only one available source for the subject of the contract or if the proposed contract is one that is by its nature defined as an emergency, the procurement officer, after obtaining the consent of the Director of the Procurement and Contract Administration Department and approval of the State Court Administrator, may award a contract without competition to the sole source.

.02 Conditions for Use

A. Sole source procurement is not permissible unless a requirement is available from only a single vendor. The following are some examples of circumstances which could necessitate sole source procurement:

- (1) When only one source exists which meets the requirements;
- (2) When the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (3) When a sole vendor's item is needed for trial use or testing;

B. The determination as to whether a procurement shall be made as a sole source shall be made by the procurement officer in writing. The procurement officer may specify the application of the determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request by a using unit that a procurement be restricted to one vendor shall be accompanied by an explanation.

C. Confidential Services

When a Judiciary unit is in need of services of a confidential nature, it shall provide a written description of the services needed to the Procurement and Contract Administration Department which will determine the appropriate procurement method necessary to ensure confidentiality.

.03 Negotiation in Sole Source Procurement

The procurement officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

.04 Record of Sole Source Procurement

A. A record of sole source procurements shall be maintained that lists:

- (1) Each contractor's name;
- (2) The amount and type of each contract;
- (3) A listing of the items procured under each contract; and
- (4) The identification number of each contract file.

Section 6 Emergencies

.01 Application

The procurement officer, with the consent of the Director of the Procurement and Contract Administration Department and the approval of the State Court Administrator, may proceed on an emergency procurement. Such a procurement is limited to the types of items and quantities of items necessary to avoid or to mitigate serious damage to health, safety, and welfare. Due to such an emergency condition, a procurement in excess of \$25,000 may be procured without the necessity of competitive sealed bidding or competitive sealed proposals in awarding or modifying a contract.

.02 Emergency Procurement

A. Authority

(1) The Procurement and Contract Administration Department may make an emergency procurement when the Judiciary's resulting need cannot be met through normal procurement methods.

(2) The procurement officer may award an emergency contract or make an emergency contract modification with the appropriate authorizations.

B. Source Selection

The procedure used shall assure that the required items are procured in time to meet the emergency. Given this constraint, such competition as is possible and practicable shall be obtained.

C. Record and Review of Emergency Procurement

(1) A record of each emergency procurement shall be made as soon as practicable and shall set forth:

(a) The basis and justification for the emergency procurement including the date the emergency first became known;

(b) A listing of supplies, services, maintenance, commodities, construction, or construction-related services procured;

(c) The names of all persons solicited and a justification if the solicitation was limited to one person;

(d) The prices and times of performance proposed by the persons responding to the solicitation;

(e) The name of and basis for the selection of a particular contractor;

(f) The amount and type of the contract or contract modification;

(g) The identification number, if any, of the contract file.

Section 7 Small Procurement (\$25,000 or Less)

.01 Definitions

Terms Defined

Competitive bidding means use of a small procurement solicitation to obtain oral or written bids (including sealed bids) from vendors.

Corporate purchasing card means a bank card issued to a Judiciary employee under the Judiciary's Corporate Purchasing Card Program that may be used to purchase category I small procurement requirements pursuant to the provisions of this section.

Item means supplies, commodities, services, and maintenance.

Oral solicitation means the procurement officer's oral description of the procurement to a vendor who reasonably may be expected to provide the required item.

Published solicitation means the written description of the procurement posted on a bid board, published in a newspaper of general circulation, or in an electronic media generally available to the business community at least 3 working days before responses are due.

Small procurement means the use of the procedures set forth in this section to obtain items reasonably expected by the procurement officer to cost \$25,000 or less or, with respect to those procurements set forth in this section, to provide annual gross revenues to the contractor of \$25,000 or less.

Written solicitation means the written description of a small procurement, or notice of its availability, furnished to a vendor who reasonably may be expected to provide the required item.

.02 Application

A. Use of the small procurement method described, shall be based on an initial decision by the procurement officer.

B. To the extent that the Procurement and Contract Administration Department delegates authority to using units to make small procurements, those procurements shall be made in accordance with procedures prescribed in this section.

.03 Categories

Small procurements are classified in three categories:

A. Category I Small Procurements-\$2,500 or less;

B. Category II Small Procurements-More than \$2,500 but not more than \$10,000; and

C. Category III Small Procurements-More than \$10,000 but not more than \$25,000.

.04 Prohibitions

A procurement may not be divided artificially in order to use the small procurement method instead of the other procurement methods set forth in this Article, or a lesser category defined under of this section.

.05 Standards

A. Solicitation Objective.

(1) Competition

The objective of soliciting bids or offers is to foster competition in obtaining needed items in a cost effective manner. In all small procurements, competition should be sought to the extent practicable considering factors such as availability of vendors, dollar value of the procurement, cost of administering the procurement, and time available to make the procurement including delivery time. For Categories II and III responsive bids or acceptable offers from at least two vendors should be obtained.

(2) Minority Business Enterprises

In addition to the solicitation objectives stated in this section, the Procurement and Contract Administration Department shall attempt to solicit bids or offers from certified minority business enterprises.

(3) Single Bid

If only one responsive bid or acceptable offer is received in response to a solicitation, an award may be made to the bidder or offeror if the procurement officer concludes that the price submitted is fair and reasonable, and that the other vendors had reasonable opportunity to respond.

(4) Small Businesses

In addition to the solicitation objectives stated above, the procurement department shall attempt to solicit bids or offers from small businesses as defined herein.

B. Solicitation Methods and Use

(1) The acceptable methods of soliciting bids or offers from vendors for small procurements are oral solicitation, written solicitation, and published solicitation.

(2) The Procurement and Contract Administration Department may use any one of the solicitation methods above for Categories I and II Small Procurements.

(3) The Procurement and Contract Administration Department shall use only written and published solicitations in attempting to achieve Category III solicitation objectives.

(4) Electronically transmitted bids or offers may be accepted for small procurements.

C. Standards for Written and Published Solicitations

A written or published solicitation used for a small procurement shall contain, at a minimum, the following elements:

(1) A description of the item requested;

(2) Time, date, place, and form of response requested;

(3) The basis for award; and

(4) The name and telephone number of the procurement officer to whom inquiries regarding the solicitation may be directed.

D. Basis For Award

The basis for award for each category of small procurement shall be the most favorable bid price or evaluated bid price, or most advantageous offer, as specified in the solicitation.

E. Contract Documentation

Each small procurement shall provide the following documentation:

(1) Small Procurements of \$2,500 or less:

(a) Contract type-oral or written;

(b) Minimum evidence:

(i) For oral contracts, a receipt, invoice, or voucher;

(ii) For written contracts, a purchase order or contract;

(iii) For purchases made with a corporate purchasing card charge slip or a telephone purchasing card log, and at least a sales slip, packing slip, cash register, receipt, or repair order.

(2) Small Procurements exceeding \$2,500:

(a) Contract type-written;

(b) Minimum evidence-A purchase order or other writing signed by the contractor.

F. Small Procurement Written Contract Content

Any purchase order or other writing used for small procurements shall contain the following elements:

(1) Identification of the parties to the contract including contractor taxpayer identification number; the taxpayer identification number shall be the Social Security number for individuals and sole proprietors and the federal employer identification number for all other types of organizations;

(2) A statement of the scope of the contract;

(3) The dollar value of the contract, if known, or estimated dollar value if the actual value is not known;

(4) The term of the contract, including completion or delivery date;

(5) Name of the procurement officer responsible for the contract.

G. Contract Clauses

In addition to the contract elements above, a written small procurement contract shall include the clauses, items, or conditions specified below, as well as those additional clauses necessary for the particular procurement.

(1) Termination for Nonappropriation

"If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this Contract shall be terminated automatically as of the beginning of the fiscal year for which funds are not available. The Contractor may not recover anticipatory profits or costs incurred after termination."

(2) Maryland Law Prevails

"The law of Maryland shall govern the interpretation and enforcement of this Contract."

(3) Disputes

Pending resolution of a dispute, the Contractor shall continue to perform this Contract, as directed by the procurement officer.

(4) Changes

"This Contract may be amended only with the written consent of both parties. Amendments may not change significantly the scope of the Contract (including the Contract price)."

(5) Termination for Default

"If the Contractor does not fulfill obligations under this Contract or violates any provision of this Contract, the Judiciary may terminate the Contract by giving the Contractor written notice of termination. Termination under this paragraph does not relieve the Contractor from liability for any damages caused to the Judiciary."

(6) Nondiscrimination

"The Contractor shall comply with the nondiscrimination provisions of federal and Maryland law."

(7) Anti-Bribery

"The Contractor certifies that, to the Contractor's best knowledge, neither the Contractor; nor (if the Contractor is a corporation or partnership) any of its officers, directors, or partners; nor any employee of the Contractor who is involved directly in obtaining contracts with the Judiciary or with the State or any county, city, or other subdivision of the State, has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the United States."

(8) Termination for Convenience

"The Judiciary may terminate this Contract, in whole or in part, without showing cause upon prior written notice to the Contractor specifying the extent and the effective date of the termination. The Judiciary shall pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and, all reasonable costs associated with termination of the Contract. The Contractor, however, may not be reimbursed for any anticipatory profits which have not been earned up to the date of termination."

H. Small Procurement Record

(1) The Procurement and Contract Administration Department shall establish procedures for maintaining small procurement records. These records shall be maintained by the Department according to the Judiciary's Records Retention Schedule.

(2) Minimum record requirements applicable to oral and written contracts are as follows:

a. Category I Small Procurement Oral Contracts:

- i. Name of person expending funds;
- ii. Date of contract award;
- iii. Name of contractor;
- iv. Receipt, invoice or voucher;
- v. Brief description of item procured.

b. Category I Small Procurement Written Contracts:

- i. Name of responsible procurement officer;
- ii. Date of contract award;
- iii. Name of contractor;
- iv. Purchase order or contract;
- v. Invoice and receiving documentation;
- vi. Brief description of item procured;
- vii. Copy of written or published solicitation, if used;
- viii. Copy of bid board or newspaper notice, if used.

c. Category I Small Procurements made with corporate purchasing cards:

- (i) Name of authorized purchaser;
- (ii) Date of purchase;
- (iii) Name of vendor;
- (iv) Charge slip or telephone purchasing card log,
- (v) Itemized sales slip, itemized packing slip, itemized cash register receipt, or itemized repair order;
- (vi) Copy of written or published solicitation, if used;
- (vii) Copy of bid board or newspaper notice, if used.

d. Category II and III Small Procurement Written Contracts:

- (i) Name of responsible procurement officer;
- (ii) Date of contract award;
- (iii) Name of contractor;
- (iv) Purchase order or contract;
- (v) Invoice and receiving documentation;
- (vi) Description of item procured;
- (vii) Bid or offer documentation including names of vendors, copies of any written bids or offers received, bid or offer amounts, statement signed by the procurement officer detailing basis of award, identification of minority business enterprises and small businesses, if applicable, and, when only one bid or offer is received in response to a solicitation, an explanation for the lack of a greater response;
- (viii) Copy of written solicitation, if used;
- (ix) Copy of bid board or newspaper notice, if used;
- (x) A brief written justification if the procurement was sole source;
- (xi) For category III small procurements, a copy of certification by the appropriate fiscal authority of fund availability to satisfy the contractual requirement.

Section 8 Mandatory Written Solicitation Requirements

.01 Public Information Act Notice

A public information act notice is a mandatory provision for all requests for proposals.

"Offerors should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide in particularity any justification why such materials, upon request, should not be disclosed by the Judiciary."

.02 Minority Business Enterprise Notice

A minority business enterprise notification is a mandatory provision for all solicitations as follows:

"Minority business enterprises are encouraged to respond to this solicitation."

.03 Minority Business Enterprise Subcontract Participation Goal

An MBE subcontract participation goal is a mandatory provision for each solicitation for contracts that will provide MBE subcontract opportunities. Small procurements made pursuant to this Policy shall contain language with the following information:

"An MBE subcontract participation goal of ____ percent of the total current amount has been established for this procurement. By submitting a response to this solicitation, the bidder or offeror agrees that this amount of the contract will be performed by minority business enterprises."

.04 Nonvisual and Hearing Impaired Access Clause

A. The following clause is a mandatory provision for each invitation for bid under or request for proposals for the purchase of new or upgraded information technology:

"The bidder or offeror warrants that the information technology offered under this bid or proposal (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into, networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The bidder or offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 5 percent."

"The phrase 'equivalent access' means the ability to receive, use, and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output."

B. The nonvisual access clause is not required if:

(1) The information technology is not available with nonvisual access because the essential elements of the information technology are visual and nonvisual equivalence cannot be developed; or

(2) The cost of modifying the information technology for compatibility with software and hardware used for nonvisual access would increase the cost of the procurement by more than 5 percent.

C. The procurement officer may request such documentation as is reasonably necessary to implement these requirements.

.05 Arrearages

An arrearages clause is a mandatory provision for all solicitations.

"By submitting a response to this solicitation, a vendor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the Judiciary and the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award."

.06 Bid/Proposal Affidavit

Each solicitation shall provide notice that the Bid/Proposal affidavit provided by the Judiciary shall be completed and submitted to the Procurement and Contract Administration Department with the vendor's bid or offer.

ARTICLE V. CONTRACT FORMATION AND AWARD

Section 1 Qualification and Duties

.01 Responsible and Responsive

- A. If the Director of the Procurement and Contract Administration Department determines that a person is not a responsible bidder or offeror, or that the bid is nonresponsive, the Director shall include that determination in the procurement file.
- B. The Director of the Procurement and Contract Administration Department may find that a person is not a responsible bidder or offeror for:
 - (1) Unreasonable failure to supply information promptly in connection with a determination of responsibility; or
 - (2) Any other reason indicating that the person does not have:
 - (a) The capability in all respects to perform fully the contract requirements, or
 - (b) The integrity and reliability that will assure good faith performance.

.02 Disclosure of Information

- A. Confidential, proprietary information, and trade secrets furnished by a bidder or offeror under this section may be disclosed to the Legislative or Executive branches of State Government only when otherwise provided by law and may not be disclosed outside of State government.
- B. Duty Not to Disclose Information
 - (1) Before bid opening:
 - (a) Bids shall remain sealed; and
 - (b) The procurement officer may not disclose the name of any person who has submitted a bid.
 - (2) Before contract award, a procurement officer may not disclose the name of any person who has submitted a proposal.
 - (3) Before awarding a procurement contract based on competitive sealed proposals, a procurement officer may not disclose the contents of a proposal to any person other than a person responsible for evaluating or reviewing the proposal.

C. Duty to Disclose Information

(1) A summary of the final evaluation of a proposal shall be open to public inspection;

(2) After an award, all proposals shall be open to public inspection; and

(3) At and after bid opening, the contents of a bid and any document submitted with the bid shall be open to public inspection.

D. Records of Evaluators

A procurement officer may deny public access to the advisory or deliberative records of any evaluator of a proposal if the records would not be available by law to a party in litigation.

Section 2 Cancellation and Rejection of IFBs and RFPs

.01 Delegation of Authority

A. The Director of the Procurement and Contract Administration Department may cancel a solicitation or reject all bids or proposals with the approval of the State Court Administrator.

.02 Cancellation of Invitations for Bids or Requests for Proposals

A. Notice

Each solicitation issued by the Procurement and Contract Administration Department shall state that the solicitation may be cancelled as provided in this Policy.

B. Cancellation Before Opening.

(1) Before opening of bids or proposals, a solicitation may be cancelled in whole or in part when the procurement officer, with the approval of the Director of the Procurement and Contract Administration Department or designee, determines that this action is fiscally not advantageous to the Judiciary or otherwise not in its best interest. Reasons for cancellation include but are not limited to:

(a) The absence of a continued need for the procurement;

(b) When proposed amendments to the solicitation would be of such magnitude and substance that a new solicitation is desirable.

(2) When a solicitation is cancelled before bid or proposal opening, the bid or proposal shall be returned to the vendor submitting it and the vendor shall be given notice of the cancellation. The notice of cancellation shall:

- (a) Identify the solicitation;
- (b) Explain the reason for cancellation; and
- (c) If appropriate, explain that opportunity will be given to compete on any resolicitation or any future procurements of a similar nature.

C. Rejection of All Bids or Proposals

(1) After opening of bids or proposals but before award, all bids or proposals may be rejected in whole or in part when the procurement officer, with the consent of the Director of the Procurement and Contract Administration Department or designee and approval of the State Court Administrator, determines that this action is not fiscally advantageous or otherwise not in the Judiciary's best interest. Reasons for rejection of all bids or proposals include but are not limited to:

- (a) The absence of a continued need for the procurement;
- (b) The Judiciary no longer can reasonably expect to fund the procurement;
- (c) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
- (d) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (e) There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith;
- (f) Bids received indicate that the needs of the Judiciary can be satisfied by a less expensive equivalent item differing from that on which the bids or proposals were invited; or
- (g) All otherwise acceptable bids or proposals received are at unreasonable prices.

(2) A notice of rejection of all bids or proposals shall be sent to all vendors that submitted bids or proposals.

D. Documentation

The determination of the reasons for cancellation or rejection of all bids or proposals shall be made a part of the procurement file.

.03 Rejection of Individual Bids or Proposals

A. Notice in Solicitation

Each solicitation issued by the Judiciary shall provide that any bid or proposal may be rejected in whole or in part when it is in the best interest of the Judiciary to do so.

B. Reasons for Rejection

Reasons for rejection of a bid or proposal include but are not limited to:

- (1) The vendor that submitted the bid or proposal is not responsible as determined by the procurement officer
- (2) The bid is not responsive as determined by the procurement officer;
- (3) The price is unreasonable;
- (4) The bidder or offeror is debarred or otherwise is ineligible for award and the period of debarment or ineligibility has not expired.

.04 Minor Irregularities in Bids or Proposals

A. A minor irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a bid or proposal from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to other bidders or offerors.

B. The procurement officer shall either give the bidder or offeror an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or proposal or waive the deficiency.

.05 Disposition of Bids or Proposals

When bids or proposals are rejected, or a solicitation is cancelled after bids or proposals have been received, the bids or proposals that have been opened shall be retained in the procurement file, and the bids or proposals that have not been opened shall be returned to the bidders or offerors upon request.

.06 Prohibition

Cost-plus-a-percentage-of-cost contracts and subcontracts are prohibited.

Section 3 Inspection, Acceptance, Replacements, Revocation, and Rejection

.01 Inspection

A. Right to Inspect

The Procurement and Contract Administration Department may, before payment or acceptance, inspect at the time and the place of delivery, labor performed or goods delivered pursuant to the contract.

B. Right to Reject and Notice of Rejection

(1) The Procurement and Contract Administration Department shall inform the contractor of rejection of labor or goods within a reasonable time after delivery. The contractor shall be responsible for the labor or goods so rejected and any expenses once a rejection occurs. The Judiciary shall assume no responsibility for rejected labor or goods. After inspection, the Judiciary may, at its option:

- (a) Return rejected goods to the contractor and forward along with the damaged goods the consignee's copy of the bill, if any, and the inspection report;
- (b) Request removal of the goods; or
- (c) Reject labor performed.

(2) If the contractor fails to remove rejected items from the Judiciary's premises within a reasonable time, the Judiciary may take any action it deems appropriate, including but not limited to:

- (a) Storing the items at the contractor's expense;
- (b) Reshipping them to the contractor and charge his account;
- (c) Reselling the items and retaining a reasonable amount for its expenses.

C. Revocation of Acceptance

(1) The Procurement and Contract Administration Department may revoke its acceptance of any labor or goods:

- (a) That do not conform to the contract and when that nonconformity reasonably impairs value; or
- (b) The acceptance of which assumed that the non-conformity would be cured within a reasonable time and this has not been accomplished.

(2) A revocation of acceptance shall constitute a rejection. The Procurement and Contract Administration Department shall send the contractor notification of revocation of acceptance within a reasonable time. The contractor shall deliver to the Procurement and Contract Administration Department instructions for the return of the items. The Department may, if the contractor fails to provide shipping instructions, take any action it deems appropriate, including but not limited to:

- (a) Storing the items at the contractor's expense;
- (b) Reshipping the items at contractor's expense;
- (c) Reselling the items and retaining a reasonable amount from the sale price to cover its expenses.

D. Reservation of Rights

Nothing contained in this section shall be construed in any way to limit the rights of the Judiciary under any law which may be applicable to any transaction governed by this Policy.

.02 Inspection and Testing of Supplies and Services

A. Solicitation Provisions

Contracts may provide that the Judiciary may inspect labor or goods at the contractor's or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or, after award, to contract requirements, and may be accepted. The inspections and tests shall be conducted in accordance with the terms of the solicitation or the contract.

B. Procedures for Trial Use and Testing

The procurement officer may establish operational procedures governing the testing and trial use of labor or goods and the application of resulting information and data to specifications or procurements.

C. Conduct of Inspections

(1) Inspectors

Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector other than the procurement officer may change any provision of the specifications or the contract without written authorization. The presence or absence of an inspector does not relieve the contractor or subcontractor from any requirements of the contract.

(2) Location

When an inspection is made in the plant or place of business of a contractor or subcontractor, the contractor or subcontractor shall provide, without charge, all reasonable facilities and assistance for the safety and convenience of the person or persons performing the inspection or testing.

(3) Time

Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times.

ARTICLE VI. PROTESTS AND CLAIMS

Section 1. Protests

.01 Definitions

Filed

A protest is considered filed when received in writing by the Director of the Procurement and Contract Administration Department.

Interested party

An actual or prospective bidder, offeror or contractor who is aggrieved by the solicitation or award of a contract, or by a protest.

Protest

A complaint relating to the solicitation or award of a procurement contract.

Protestor

Means any actual or prospective bidder, proposer or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.

Appeals Board

Means the three-member panel that hears all contract appeals within the Judicial Branch chaired by the Director of the Department of Legal Affairs within the Administrative Office of the Courts and a representative from the Office of the Clerk of the Circuit Courts and the District Court.

.02 Filing a Protest

A. An interested party may file a protest with the Procurement and Contract Administration Department of the Administrative Office of the Courts.

B. The protest shall be in writing and addressed to the specific attention of the Director of the Procurement and Contract Administration Department.

.03 Time for Filing

A. A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date and time of receipt of initial proposals.

B. A protest based upon alleged improprieties in a solicitation that did not exist in the original solicitation but which arose because of an amendment to the solicitation shall be filed not later than the solicitation closing date and time for receipt of bids or proposals identified in the amendment (or in the original solicitation, if the opening date and time were not changed by amendment).

C. In all other cases, protests shall be filed not later than seven (7) calendar days after the basis for the protest is known or should have been known, whichever is earlier.

D. All costs associated with filing and prosecuting a protest shall be borne by the protestor.

.04 Requested Information

A. The written protest shall include the following information:

- (1) The name and address of the protestor;
- (2) Appropriate identification of the procurement;
- (3) A statement of the reasons for the protest; and,
- (4) Supporting exhibits, evidence or documents to substantiate the reasons for the

protests.

B. The Director of the Procurement and Contract Administration Department may request additional information in order to consider a protest. The Protestor shall file the additional information with the Director Procurement and Contract Administration Department within five (5) calendar days after receiving the request. Failure of any party to comply with a request by the Director of the Procurement and Contract Administration Department for information or substantiation may result in a resolution of the protest without consideration of any additional information.

C. Upon written request, the Director of the Procurement and Contract Administration Department shall make available information submitted that bears on the substance of the protest except when information is confidential, or otherwise is permitted or required to be withheld by law. Persons who wish to keep information they have submitted confidential shall so request by specifically identifying the information and indicating on the front page of each document submitted that it contains information not subject to disclosure, and the reasons the Protestor believes it is confidential. The Director of the Procurement and Contract Administration Department will determine separately whether or not any information may be withheld in accordance with the Maryland Public Information Act.

.05 Negotiations with Interested Parties

The Director of the Procurement and Contract Administration Department may conduct discussions and, if appropriate, negotiations with the protester or any other interested party and may resolve the protest by agreement with any one or more interested parties. Such an agreement shall be in writing.

.06 Decision

A. A decision on a protest shall be in writing and expeditiously made by the Director of the Procurement and Contract Administration Department after receiving all relevant information.

B. The decision of the Director of the Procurement and Contract Administration Department shall include:

- (1) a description of the controversy.

(2) a statement of the decision, with supporting material.

C. The Director of the Procurement and Contract Administration Department shall furnish a copy of the decision to the protester and all other interested parties, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

ARTICLE VII. SUSPENSION AND DEBARMENT

Section 1 General

.01 Purpose

The purpose of this subtitle is to:

A. Promote the best interests of the public and the Judiciary by protecting the integrity of the procurement process; and

B. Ensure open competition for public contracts and impartial selection of qualified and responsible participants in the procurement process.

.02 Definitions

Terms Defined

Business means an individual, or a corporation, partnership, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.

Contract means any agreement in any form.

Controlling stockholder means a stockholder who:

- (a) Owns more than 25 percent of the voting shares of a corporation; or
- (b) Has the power to direct or control the direction of the management or policies of a corporation, regardless of the number of shares the stockholder owns.

Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea.

Person means an individual, or a corporation, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club, or other organization or legal entity.

Principal means a person with actual or apparent authority to enter into a contract on behalf of a business.

Public body means:

- (a) The State; or
- (b) A local governmental entity in the State, including a bicounty or multi-county governmental entity.

Unsatisfactory Performance

(a) Unsatisfactory performance means deficient performance or default, within the preceding 5 years, on one or more Judiciary contracts.

(b) **Deficient performance** includes but is not limited to:

- (i) Failure to perform in accordance with contract specifications or terms and conditions;
- (ii) Untimely performance;
- (iii) Performance that violates an applicable statute, regulation, ordinance, code, or standard of performance in the relevant industry.

.03 Public Notice of Suspension and Debarment Actions

A. Authority.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Director of the Procurement and Contract Administration Department, after consultation with the Director of Legal Affairs, may debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The Director of the Procurement and Contract Administration Department, after consultation with the Director of Legal Affairs, may suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

B. Causes for Debarment or Suspension

The causes for debarment or suspension include the following:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
2. Conviction under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Judiciary contractor.
3. Conviction under State or federal antitrust statutes arising out of the submission of bids or proposals.
4. Violation of contract provisions, as set forth below, of a character which is regarded by the Director of the Procurement and Contract Administration Department to be so serious as to justify debarment action.
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

- b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

5. Any other cause the Director of the Procurement and Contract Administration Department determines to be so serious and compelling as to affect responsibility as a Judiciary contractor, including debarment by another governmental entity for any cause listed in this Policy.

C. Decision.

The Director of the Procurement and Contract Administration Department shall issue a written decision to debar or suspend. The decision shall:

1. State the reasons for the action taken.
2. Inform the debarred or suspended person involved of its rights to or administrative review as provided in this section.

D. Notice of Decision.

A copy of the decision under Subsection (3) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

E. Finality of Decision.

A decision under this section shall be final.

The Judiciary shall maintain a list of persons that it has suspended or debarred.

ARTICLE VIII. Socioeconomic Policies

MARYLAND JUDICIARY SOCIOECONOMIC POLICY Minority Business Enterprise Policy

.01 General-Purpose.

To ensure that maximum contracting opportunities will be extended to certified minority business enterprises and to establish the Fair Practices/Minority Business Enterprise Compliance Office to administer the Judiciary's Minority Business Enterprise Program under the management of the MBE Liaison Officer who is accountable administratively to the Fair Practice Officer. The MBE Liaison Officer shall be responsible for coordinating the agency outreach efforts to the minority business community, reviewing Judiciary contracting procedures to ensure compliance with this section, assisting in the resolution of contracting issues and for maintaining statistical reporting information on the MBE Program.

.02 Application.

The Judicial MBE policies and procedures applies to the Court of Appeals, the Court of Special Appeals, the District Court of Maryland, the Administrative Office of the Courts, the Clerk of the Court offices of the Circuit Courts, and Court-Related Agencies.

This chapter applies to every procurement solicitation of the Judiciary that reasonably is anticipated to result in a contract award of \$50,000.00 or more. The Judiciary shall structure its procedures for procuring supplies, services, maintenance, and related general miscellaneous services so as to maximize contracting opportunities for certified minority business enterprises.

.03 Definitions.

A. In this chapter, the following words have the meanings indicated.

B. Terms Defined.

- (1) "Certification" means a determination by the Department of Transportation or any other governmental agency or unit within the State of Maryland promulgated for the purpose of certification of Minority Business Enterprises.
- (2) "Control" means the exercise of the power to manage and operate a business enterprise.
- (3) "Joint venture" means an association of two or more persons to carry out a single business activity for a limited purpose or time.
- (4) "Minority business enterprise" or "MBE" means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is at least 51 percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled.

- (5) Minority Person:
 - (a) "Minority person" means a member of a socially or economically disadvantaged group, which for purposes of this chapter includes African Americans (not of Hispanic origin), Hispanics, American Indians, Asians, women, and the physically or mentally disabled.
- (6) "Ownership" means:
 - (a) For a sole proprietorship, that the sole proprietor is a minority person. If the ownership interest held by a minority person is subject to formal or informal restrictions such as options, security interests, agreements, etc., held by a nonminority person or business entity, the options, security interests, agreements, etc. held by the nonminority person or business entity may not significantly impair the minority person's ownership interest.
 - (b) For a partnership, that at least 51 percent of the partnership's assets or interests are owned by a minority person or minority persons. If the ownership interest held by a minority person is subject to formal or informal restrictions such as options, security interests, agreements, etc. held by a nonminority person or business entity, the options, security interests, agreements, etc. held by the nonminority person or business entity may not significantly impair the minority person's ownership interest.
 - (c) For a corporation, that legal and equitable ownership of at least 51 percent of all classes of stock, bonds, or other securities issued by the corporation is owned by a minority person or minority persons. If an ownership interest held by a minority person is subject to formal or informal restrictions such as options, security interests, agreements, etc. held by a nonminority person or business entity, the options, security interests, agreements, etc. held by the nonminority person or business entity may not significantly impair the minority person's ownership interest.
- (7) "Procurement Unit" means a department or independent unit of the Judicial Branch.
- (8) "Solicitation notice" means public notice of a solicitation for bids, offers, or expressions of interest, which contains the nature of the procurement, relevant dates, the availability of solicitation documents, if any, and other pertinent information. The notice may consist of, but is not limited to:
 - (a) Legal advertisement;
 - (b) Newspaper notice;
 - (c) Bid board notice; or
 - (d) Bid or proposal documents including the invitation for bids or request for proposals.
- (9) MDOT means the Maryland Department of Transportation
- (10) MBE Liaison Officer means a Judiciary employee who provides guidance to the Judiciary on MBE related matters.
- (11) MJPP means the Maryland Judiciary Procurement Policies
- (12) Subcontracting means one who participates, through a contract, subcontract, or lease agreement, in any matter covered by this program.

- (13) Direct Solicitation means the invitation for bids, request for quotations, request for proposals received by Minority Business Enterprises or any other method or instrument used to communicate to potential bidders or offerors the procurement needs of the Judiciary.

.04 MBE Liaison Officer.

The Chief Judge of the Court of Appeals shall designate an employee to be an MBE Liaison Officer for the Judiciary's minority business enterprise program. The MBE Liaison Officer is responsible for coordinating Judiciary outreach efforts to the minority business community, reviewing Judiciary contracting procedures to ensure compliance, assisting in the resolution of contracting issues, and maintaining MBE program reports or information. The MBE Liaison Officer shall be assigned to the Fair Practices/Minority Business Enterprise Office under the administrative direction of the Manager of Fair Practices.

.05 Outreach.

- A. Outreach efforts to minority business enterprises shall advise them of contracting opportunities within the Judiciary.
- B. The MBE Liaison Officer shall periodically conduct meetings with minority business enterprises, as appropriate, to advise of procurement opportunities within the Judiciary.
- C. The Office of Procurement and Contract Administration will support the MBE Liaison Office in all minority business initiatives by providing staff for all outreach activities and any information relating to upcoming procurement opportunities.

.06 MBE Notification.

- A. As part of the solicitation process being employed for the business community in general, and in addition to the public notice requirements, the MBE Liaison Officer shall request that a copy of the solicitation notice be sent to certified minority business enterprises known to be providing the supplies, services, maintenance and miscellaneous services being procured. The notification should be sent to a sufficient number of certified MBEs as reasonably to assure one or more certified MBE responses to the solicitation.
 - (1) A minority business enterprise notification should contain a mandatory provision for all solicitations as follows:
"minority business enterprises are encouraged to respond to this solicitation".
 - (2) A copy of the solicitation notice for each procurement to the appropriate minority business associations, minority business assistance agencies, and trade organizations identified by the MBE Liaison Officer. One copy of solicitation documents for these procurements shall be made available free of charge by the procurement department to these entities on request. The copy shall be marked "For Information Purposes Only".

.07 Goal Assessment.

A. General.

- (1) The MBE Liaison Officer shall assess the potential for certified MBE participation in each contract, and the amount of participation expected under each procurement method described in section "B" (below) before the solicitation is let to prospective vendors.
- (2) The following factors shall be used to anticipate the degree of certified MBE participation:
 - (a) The extent to which the direct solicitation, subcontracting opportunity method, or combination of both methods is determined most likely to result in maximum certified MBE participation in the contract;
 - (b) The number of certified MBEs identified for a particular supply, service, maintenance, or miscellaneous service; and
 - (c) The feasibility of subcontracting opportunities, given the nature and extent of the proposed contract;

B. Solicitation Methods

- (1) Direct Solicitation. If known certified MBEs can provide the entire contract, then the MBE Liaison Officer may recommend that MBEs only be solicited directly.
- (2) MBE Subcontract Method.
 - (a) Notwithstanding whether a direct solicitation is made under B(1) of this chapter, all contracts in excess of \$50,000 shall contain a certified MBE subcontract participation goal, expressed as a percentage of the dollar value of the contract, that the contractor shall attempt to subcontract to certified MBEs
- (3) Combination Procurement Method.
 - (a) A combination of direct solicitation and the MBE subcontract methods, pursuant to B(1) and (2) of this chapter, may be used when the MBE Liaison Officer decides this method will be most likely to achieve the greatest degree of certified MBE participation.
 - (b) This solicitation shall contain all mandatory clauses.

C. Solicitation Content

Each solicitation identified by MBE Liaison Officer as having subcontract opportunities shall contain the clauses required by Title 04.07 and Title 04.08. The solicitation shall also contain provisions requiring bidders or offerors to:

- (i) Identify specific work categories within the scope of the procurement appropriate for subcontracting;
- (ii) Solicit minority business enterprises in writing at least 10 days before bids or proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;
- (iii) Attempt to make personal contact with the MBEs solicited and to document these attempts;
- (iv) Assist MBEs to fulfill, or to seek waiver of, bonding requirements; and

- (v) Attend prebid, or other meetings the procurement department schedules to publicize contracting opportunities to MBEs.
- (c) A bidder or offeror shall submit with its bid or proposal a completed certified MBE utilization affidavit on a form provided by the procurement department.
- (d) The names of prime contractors requesting documents for contracts shall be made available on request to any certified MBEs who has an interest in subcontracting.
- (D) Prebid and Preproposal Conferences. When prebid or preproposal conferences are held, the MBE Liaison Officer shall explain the certified MBE subcontracting goal if applicable, the MBE provisions of the solicitation, the documentation required, and its relationship to the determinations that will be made in connection with the evaluation process.
- (E) Federal Requirements. To the extent required by federal assistance instruments applicable to contracts let by the Judiciary under a federal assistance program, only those MBEs meeting federal requirements and criteria shall be used.

.08 MBE Contract Requirements.

A. General.

- (1) Accomplishment of Goal.
 - (a) A certified MBE prime contractor must meet the contract goals through use of subcontractors. MBE prime contractors will not be included as obtaining the contract goal for the use of their own workforce.
 - (b) A non-MBE prime contractor shall accomplish an amount of work not less than the MBE subcontract goal with certified MBE subcontractors.
 - (c) A prime contractor that consists of joint venture, MBE prime and non MBE prime, shall accomplish the contract goals through use of MBE subcontractors. The MBE prime contractors will not be included in obtaining the contract goal for the use of their own workforce.
- (2) Each bid or offer submitted in response to this solicitation shall be accompanied by a completed MBE utilization affidavit, on forms provided by the MBE Liaison Officer, whereby the bidder or offeror acknowledges the MBE participation goal and commits to make a good faith effort to achieve the goal.

B. Additional Documentation:

- (1) The documentation in B(2)-(6) of this chapter is considered as part of the contract. WHEREIN A REQUIREMENT THAT A BID OR PROPOSAL BASED ON A SOLICITATION WITH AN EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION INCLUDE PROOF OF A CERTIFIED MINORITY BUSINESS ENTERPRISE COMMITMENT AT THE TIME OF SUBMISSION; AND IF DOCUMENTATION IS NOT FURNISHED, the BID or PROPOSAL WILL BE DEEMED NON-RESPONSIVE.
- (2) A completed schedule of participation to include MJ EEO-003 and MJ EEO-004 shall be furnished, naming each certified MBE who will participate in the project and describes the:

- (a) Contract items to be performed or furnished by each MBE and the proposed timetable for performance; and
 - (b) Agreed prices to be paid to each MBE for the work or supply.
- (3) An MBE subcontractor project participation statement shall be furnished and signed by both the bidder or offeror and each MBE listed in the schedule of participation, which includes:
 - (a) A statement of intent to enter into a contract between the prime contractor and each subcontractor if a contract is executed between the Judiciary and the prime contractor or, if the prime contract has been awarded, copies of the subcontract agreement or agreements; and
 - (b) The amount and type of bonds required of MBE subcontractors, if any.
- (4) A list shall be furnished which includes:
 - (a) The contractor's compliance with the outreach efforts required under this chapter.
 - (b) Certified MBE subcontractors whom the contractor solicited; and
 - (c) Price quotes received from both minority and nonminority subcontract bidders.
- (5) An affidavit shall be completed and signed by the prime contractor stating that, in the solicitation of subcontract quotations or offers, MBE subcontractors were given not less than the same information and amount of time to respond as were non-MBE subcontractors, and that the solicitation process was conducted in such manner as to otherwise not place MBE subcontractors at a competitive disadvantage to non-MBE subcontractors.
- (6) Other documentation considered appropriate by the Judiciary to ascertain bidder or offeror responsibility in connection with the contract MBE participation goal shall be furnished by the bidder or offeror.
- (7) If the apparent successful bidder or offeror is unable to achieve the contract goal for MBE participation, the apparent successful bidder or offeror shall consult with the MBE Liaison Officer and, if still unable to achieve the contract goal, may submit instead of, or in conjunction with, the schedule of participation a request in writing for a waiver as provided in this chapter.
- (8) The contractor, by submitting the bid or offer, consents to provide the documentation requested by the Judiciary, and to provide right of entry at any reasonable time for the purpose of allowing the Judiciary's representatives to verify compliance with the MBE subcontractor requirements.

- C. Contracts Involving Subcontracts.
 - (1) A contract involving subcontracts is subject to the MBE Liaison Officer concluding that the apparent successful bidder or offeror meets the applicable certified MBE participation provisions contained in the solicitation.
 - (2) Upon review of the documentation, the MBE Liaison Officer shall make a finding whether the apparent successful bidder or offeror has complied in good faith with the outreach efforts required in this chapter. If the MBE Liaison Officer finds that the contractor has complied in good faith, the agency may not require the contractor to renegotiate any subcontract in order to achieve a different result.
- D. If the MBE Liaison Officer determines that the apparent successful bidder or offeror has not complied with the certified MBE subcontract participation contract goal, and has not obtained a waiver in accordance with this chapter, or if the bidder or offeror fails to submit the documentation required by the solicitation, or fails to comply in good faith with the outreach efforts required in this chapter, the MBE Liaison Officer, upon review by the Director of Legal Affairs, Director Procurement and Contract Administration and approval of the State Court Administrator, may reject the bid or offer or cancel the award of the contract. The reasons for this action shall be specified in writing and mailed or delivered to the bidder or offeror.

.09 Waiver.

- A. If, for any reason, the apparent successful bidder or offeror is unable to achieve the contract goal for certified MBE participation, the bidder or offeror may request, in writing, a waiver to include the following:
 - (1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs in order to increase the likelihood of achieving the stated goal;
 - (2) A detailed statement of the efforts made to contact and negotiate with certified MBEs including.
 - (a) The names, addresses, dates, and telephone numbers of certified MBEs contacted; and
 - (b) A description of the information provided to certify MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed.
 - (3) To each certified MBE that placed a subcontract quotation or offer that the apparent successful bidder or offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion;
 - (4) A list of minority subcontractors found to be unavailable, which shall be accompanied by an MBE unavailability certification signed by the minority business enterprise, or a statement from the apparent successful bidder or offeror that the minority business refused to give the written certification; and
 - (5) The record of the apparent successful bidder's or offeror's compliance with the outreach efforts required in this chapter.

- B. A waiver of a certified MBE contract goal may be granted only upon a reasonable demonstration by the bidder or offeror that certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price and if the Director of Procurement or designee determines that the Judiciary's interest is best served by a waiver. In making a determination under this section, the Director of Procurement and Contract Administration or designee may consider catalogue prices, general market availability, and availability of certified MBEs in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the Judiciary and any other relevant factor.
- C. The Director of Procurement may waive any of the provisions of this chapter for a sole source or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.
- D. When a waiver is granted, except waivers under C of this chapter, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE Liaison Officer.

.10 Amendments for Unforeseen Circumstances.

If at any time before execution of a contract, the apparent successful bidder or offeror determines that a certified MBE listed on the schedule for participation has become or will become unavailable, then the apparent successful bidder or offeror immediately shall notify the MBE Liaison Officer. Any desired change in the schedule for participation shall be approved in advance by the MBE Liaison Officer and shall indicate the contractor's efforts to substitute another certified MBE subcontractor to perform the work. Desired changes occurring after the date of contract execution may occur only upon written approval by the Judiciary's MBE Liaison Officer.

.11 Compliance.

- A. To ensure compliance with certified MBE subcontract participation goals, the MBE Liaison Officer shall verify that the certified MBEs listed in the schedule of participation are actually performing work and receiving compensation as set forth in the schedule. The contractor shall:
 - (1) Permit the MBE Liaison Office or designee to inspect any relevant matter, including records and the jobsite and to interview subcontractors and workers;
 - (2) Submit monthly to the MBE Liaison Officer a report listing unpaid invoices over 30 days old received from a certified MBE subcontractor, and the reason payment has not been made; and
 - (3) Include in its agreements with its certified MBE subcontractors a requirement that the certified MBE subcontractors submit monthly to the MBE Liaison Officer a report identifying the prime contract, and listing.
 - (a) Payments received from the contractor in the preceding 30 days, and
 - (b) Invoices for which the subcontractor has not been paid.

- B. Upon determining a contractor's noncompliance, the MBE Liaison Officer shall notify the contractor in writing of its findings and shall specify what corrective actions are required. The contractor is required to initiate the corrective actions within 10 days and complete them within the time specified by the MBE Liaison Officer.
- C. If the MBE Liaison Officer determines that material noncompliance with MBE contract provisions exists and that the prime contractor refuses or fails to take the corrective action required by the MBE Liaison Officer, then the following sanctions may be invoked:
 - (1) Termination of the contract;
 - (2) Withholding payment or a percentage thereof, pending correction;
 - (3) Referral to the Director of Legal Affairs for appropriate action; or
 - (4) Initiation of any other specific remedy identified by the contract.
- D. Upon completion of the project, the MBE Liaison Officer shall:
 - (1) Prepare a report that compares the dollar value of the payments actually received by MBEs with the dollar value of the amount that MBEs were intended to have received under the contract's MBE participation goal; and
 - (2) Include in the report an explanation of any discrepancy.
 - (3) Prompt Payment of Subcontractors Mandatory provision for all Judiciary Contracts. The contractor shall promptly pay a subcontractor any undisputed amount to which the subcontractor is entitled for work under a contract for commodities, services, maintenance and general miscellaneous within 10 days of receiving a progress or final payment from the Judiciary.

.12 Mandatory Provisions for all Maryland Judiciary Contracts

- (1) This contract and all subcontracts issued under this contract are subject to the provisions of the Maryland Judiciary Procurement Policies, Title 07 – Mandatory Contract Provisions – All Contracts.
- (2) “Undisputed amount”,
- (3) Prime contractor”, and “Subcontractor” have the meanings as stated in the Maryland Judiciary Procurement Policies (MJPP).
- (4) A contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the contractor receives a progress payment or a notice of final payment for work under this contract.
- (5) If a contractor fails to make payment within the period prescribed in section 2, a subcontractor may request a remedy in accordance with procedure outlined in the MJPP. A contractor shall include in its subcontracts for work under this contract, wording that incorporates the provisions, duties, and obligations of section 1-4 of this chapter.

.13 Reporting.

- A. The MBE Liaison Officer shall make a report annually within 90 days following the close of the fiscal year to the Chief Judge of the Court of Appeals.
- (1) The total number and value of its procurements from certified MBEs as prime contractors, and separately as subcontractors, by specific category of minority business enterprise;
 - (2) The percentages, by specific category of minority business enterprise, that represent the total number and value of its procurements for the fiscal year just ended; and
 - (3) The number of waivers granted pursuant to this chapter.

Section 2 Procurement from State Use Industries, Blind Industries and Services of Maryland, and Certified Sheltered Workshops

.01 Scope

The Judiciary shall endeavor to provide that maximum contracting opportunities be extended to State Use Industries, Blind Industries, Services of Maryland, and Certified Sheltered Workshops.

.02 Definitions

Terms Defined

Blind Industries and Services of Maryland means the entity designated by law to produce supplies manufactured and assembled by processes involving blind workers.

Certified sheltered workshop means an entity, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual, that is:

- (a) Organized under the laws of the United States or the State of Maryland;

- (b) Accredited by the Division of Vocational Rehabilitation of the State Department of Education;
- (c) Operated in the interests of handicapped individuals; and
- (d) Certified as a sheltered workshop by the Wage and Hour Division of the United States Department of Labor.

Selling entity means State Use Industries, Blind Industries and Services of Maryland, or certified sheltered workshops.

State Use Industries means a unit of the Division of Correction of the Department of Public Safety and Correctional Services that is authorized by law to use prison labor to produce supplies or to provide services for sale to public entities and certain not-for-profit organizations.

.03 Application

- A. Except as otherwise provided in this Policy, this section applies to every procurement of supplies or services that can be provided by a selling entity.
- B. Only supplies and services that directly benefit Division of Correction inmates, blind persons, or handicapped persons, through meaningful work experiences, occupational opportunities, vocational rehabilitation and training, and work therapy, are to be provided by the selling entities.
- C. This section does not apply to supplies or services provided under subcontract to a selling entity.
- D. Nothing in this section shall require the Judiciary to lessen or otherwise alter its reasonable performance, quality, design, delivery, or quantity specifications in order to meet a selling entity's ability to provide a supply or service.

occupational opportunities, vocational rehabilitation and training, and work therapy, are to be provided by the selling entities.

C. This section does not apply to supplies or services provided under subcontract to a selling entity.

D. Nothing in this section shall require the Judiciary to lessen or otherwise alter its reasonable performance, quality, design, delivery, or quantity specifications in order to meet a selling entity's ability to provide a supply or service.